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July 25, 2024

Via ECF

Mark J. Langer
Clerk of the Court
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W.
Washington, DC 20001

Re: *City of Port Isabel, et al. v. FERC*, No. 23-1175, *et al.*
Response to Rule 28(j) Supplemental Authorities (Argued May 17, 2024)

Dear Mr. Langer:

FERC is correct that *Healthy Gulf, et al. v. FERC*, No. 22-1069, does not support Petitioners' arguments.

Petitioners falsely assert that they made the same argument as in *Healthy Gulf*, namely that FERC allegedly failed to justify not following “*the ad hoc approach*” in *Northern Natural Gas Co.*, 174 FERC ¶ 61,189 (2021). Pet’r Ltr. 1. Petitioners never urged this argument before FERC, *see* Reh’g Req. J.A.512-551, and, therefore, waived it. 15 U.S.C. § 717r(b). While Petitioners argued that FERC could make “*an ad-hoc determination*” based on FERC’s draft greenhouse gas policy statement, nowhere do Petitioners even refer to or cite *Northern Natural*. J.A.544-45. *Healthy Gulf* actually supports FERC’s explanation that it would not apply the draft policy. Slip Op. 8-9 (citing *Ala. Mun. Distribs. Grp. v. FERC*, 100 F.4th 207, 214-15 (D.C. Cir. 2024)); Remand Order at P 39 (J.A.159).

Petitioners’ *Northern Natural* arguments are also outside the scope of the remand. FERC Ltr. 2. The remand concerned “whether 40 C.F.R. § 1502.21(c) calls for [FERC] to apply the social cost of carbon protocol or some other analytical

framework, as ‘generally accepted in the scientific community.’” *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1330 (D.C. Cir. 2021). *Northern Natural* did not concern 40 C.F.R. § 1502.21(c). FERC did not apply the social cost of carbon, or any generally accepted scientific method in *Northern Natural*. 174 FERC ¶ 61,189 at P 36. Such arguments are outside the scope of the remand, and *Northern Natural* is irrelevant here.

Indeed, *Healthy Gulf* supports FERC’s decision not to apply the social cost of carbon to determine significance. In *Healthy Gulf*, this Court found FERC’s rationale that “there are no criteria to identify what monetized values are significant for NEPA purposes” and that FERC was “unable to identify any such appropriate criteria” as sufficient. Slip Op. 9 (citing *Ctr. For Biological Diversity v. FERC*, 67 F.4th 1176, 1183-84 (D.C. Cir. 2023)). FERC properly relied on the same rational here. Remand Order at P 20 (J.A.10-11); Rehearing Order at P 42 (J.A.160-61).

Respectfully submitted,

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Respectfully submitted,

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